IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.12874 of 2008
HIRA SINGH
W i t h
Cr.Misc. No.31317 of 2008
ASHOK SINGH @ ASHOK KUMAR SINGH
Versus
THE STATE OF BIHAR

4/ 19/11/2008. Heard learned counsel for the petitioners and learned counsel for the State as also for the informant who had been noticed in Cr.Misc.No.12874/08.

The petitioners are alleged to have fired at the deceased at the leg and chest respectively when another co-accused Anil Singh fired at the head. The informant specifically asserts in the F.I.R. that he was present at the time of occurrence and witnessed the assault which was made at close range.

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The prayer for bail of both the petitioners was rejected earlier. The renewed prayer for bail by co-accused Anil Singh has, for the first time, been rejected as recently as 12.11.2008 in Cr. Misc. No.31257/08.

Learned counsel for the petitioners have strenuously urged that the informant had not supported the allegations in his deposition during trial. In fact, the informant had stated that he had not witnessed the occurrence. A certified copy of the deposition has been placed before this Court.

The allegations are very grave. The informant

asserted himself to be an eye-witness. That he may have gone hostile during trial, does not persuade this Court to grant bail. The application is rejected.

The informant who is present undertakes to cooperate with the trial for an early disposal of the same. In Cr. Misc. No.31257/08 directions have already been issued for conclusion of the trial within four months. In the event that prosecution-witnesses do not appear after summons and warrants and seek to delay the trial, the court below shall be at liberty to proceed appropriately in accordance with law with the trial so that it be completed preferably within the time fixed by an order of this Court.

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In the entirety of the matter, this Court considers it proper at this stage to observe that if the prosecution ultimately fails because of prosecution-witnesses not supporting the allegations, the court below is directed to proceed against the concerned appropriately under Chapter-11 of the Indian Penal Code and Section-250, 344, 349 and other necessary provisions of the Cr.P.C. as also its duty to arrive at the truth as laid down by the Supreme Court in AIR 2008 S.C. 1367 (Zahira Habibullah Sheikh versus State of Gugrat by not being a mute spectator but applying its mind, asking questions and analysis of evidence to arrive at the truth as explained in paragraph Nos.34 and 35 of the judgement

as follows:-

"33. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for

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reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

34. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their

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family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

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(Navin Sinha, J)